



COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

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February 28, 2024

Gregory J. Lyons
Partner
Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, NY 10001

Dear Mr. Lyons:

This letter is in response to your correspondence dated December 18, 2023, to the Division of Banks (Division) seeking an advisory legal opinion on behalf of your client (Bank) as to whether its personnel located at a Massachusetts representative office would be able to engage in ministerial loan document execution services under M.G.L. c. 167, section 37.

As discussed in telephone calls with you, the Bank is a foreign bank, based outside of the United States, with a representative office (MA Representative Office) located in the Commonwealth of Massachusetts (Massachusetts or the Commonwealth). The Bank is seeking confirmation that Massachusetts law would permit its personnel located at the MA Representative Office to engage in “ministerial” loan document execution services as an accommodation to its clients. Your letter asserts that this type of loan document execution service would be ministerial because it would occur exclusively following the express direction of senior personnel from the New York branch of the Bank or from another authorized location outside of the Commonwealth. According to your letter, the staff located at the MA Representative Office principally meet with clients and perform the typical client relations functions of discussing new products and assisting clients in resolving any questions or concerns. However, in order to improve its client service, the Bank would like the ability to allow clients to fully execute loan agreements with a staff member of the Bank at the MA Representative Office. This service would prevent a client of the Bank from having to travel to the Bank’s New York branch in order to sign a loan agreement in person. Your letter notes that the MA Representative Office personnel would never have authority to approve the granting of the credit, nor would they have independent authority to execute loan documents. Rather, all loan approvals would occur exclusively at the Bank's New York branch, or other authorized location outside of the Commonwealth, and the New York branch then would direct personnel in the Commonwealth to execute the loan documents.

Massachusetts General Laws chapter 167, section 37 provides, in part, that a corporation shall not solicit or receive deposits or transact any business whatsoever in the manner described in chapters 167, 167C through 167G, and 168 through 172, unless authorized to do so under the laws of the Commonwealth. Section 37 also provides that such a corporation may not make use of any sign at the place where its business is transacted or use any written or printed materials having thereon any name or other words

indicating that such place or office is a bank. Additionally, the statute prohibits a corporation from transacting business under any name or title, which contains the word “bank.” The purpose of this statute is to prohibit the practice of unauthorized banking in the Commonwealth and to prevent an entity from creating the impression that might lead the public to believe that its business is that of a bank.

The Division has issued several legal opinions relating to this statute. At least as far back as 1995, the Division has permitted banks to establish non-branch offices with activities that would include: consulting with members regarding consumer loans, providing loan applications, providing information relative to mortgage services, distributing loan proceeds checks, accepting membership applications, and offering financial counseling; so long as no deposits or withdrawals would be allowed at this office. *See, e.g.,* Division of Banks Opinion 95-081. In relevance to this matter, the Division has taken the position that a foreign bank may establish a representative office in the Commonwealth where the representatives would not execute necessary paperwork to establish a contractual agreement, would not accept funds in any form, would not assign account numbers, and would not receive money for deposit in Massachusetts. *See, e.g.,* Division of Banks Opinion 99-086. Opinion 99-086 reiterates that no money would be received for deposits in Massachusetts and “any **deposit-related documentation** requiring execution by a bank would be executed by the New York branch in New York.” (emphasis added). In Opinion 99-086, therefore, the focus was on limiting the execution of contractual agreements related to establishing a depositor relationship with the bank. The Division does not believe that the purpose of Opinion 99-086 was to establish a broad prohibition on signing documents, such as loans approved in the main branch, at representative offices. Indeed, in a related matter, when asked to consider whether a satellite office of a bank would be considered a branch, and thereby required to obtain a license, the Division stated that “its general position has been that such licensing is not required in order for a licensee to conduct administrative or sales-related activities.” *See* Division of Banks Opinion 03-043.¹ Furthermore, the Division has previously not taken exception with a representative office executing loan documents, provided “no loan applications will be approved at, no funds will be disbursed from, and no payments or deposits will be accepted at these offices.” *See* Division of Banks Approval 06-682.

As an initial matter, your correspondence confirms that the MA Representative Office personnel would never have authority to approve the granting of the credit, nor would they have independent authority to execute loan documents. Accordingly, all loan approvals would occur exclusively at the authorized location by senior personnel outside of the Commonwealth, who would then direct personnel in the Commonwealth to execute the loan documents. As such, the MA Representative Office personnel would expressly be precluded from making any material changes to the loan documents, or otherwise amending the credit decision, without express authorization from the New York branch. Under this scenario, as described, the contractual agreement would have already been established at an authorized location and the signing of the paperwork would merely serve as an administrative function. It is the position of the Division that the activities to be performed by the staff of the MA Representative Office, as described in your letter, do not constitute the business of banking and that permitting this type of activity at the MA Representative Office would not constitute a branch office.

Furthermore, it is the position of the Division that the prohibitions set forth in Massachusetts General Laws chapter 167, section 37 are not applicable in this matter. The Division has no objection to the activities, as described, by the Bank in conducting its Massachusetts operations, since the activities are, in fact, a purely administrative matter.

¹ The Division considers branch licensing questions on a case-by-case basis and would need to consider specific facts of each case against the general position articulated in Opinion 03-043.

Gregory J. Lyons
February 28, 2024
Page 3

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from those stated above may result in a different position statement by the Division.

Sincerely,

Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

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